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**Via Email**

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington DC 20554

Re: Docket WT 02-55  
Ex Parte Presentation

Dear Chairman Powell:

On behalf of Motient Corporation, ("Motient"), we write to urge that the Commission allow Motient to have its spectrum relocated above 861 MHz as part of the overall "rebanding" of 800 MHz, which Motient understands to be necessary in order to facilitate resolution of the existing interference issues involving public safety licensees. In support, Motient respectfully submits the following.

Motient is a nationwide provider of wireless interconnectivity services for businesses and individuals. Motient's services include paging, data, email and other mobile wireless products. As the Commission's records reflect, Motient is licensed to operate within the 800 MHz band in hundreds of markets across the country. In certain instances, Motient operates on a geographical license basis. In most cases, however, it operates over frequencies allocated pursuant to site-specific licenses.

Under the relocation plans currently being considered by the Commission, it appears that Motient's spectrum will be left in the lower part of the 800 MHz band, along with public safety and industrial users, while Nextel Communications ("Nextel") (and perhaps one or more other commercial wireless service providers that use the 800 MHz band) will be relocated to the upper part of the band. Indeed, it appears Motient may be the only commercial user that would be left in

the lower part of the 800 MHz band. Because of a number of factors, this rebanding would make it extremely difficult, if not impossible, for Motient to modernize its network. Motient would be surrounded by public safety and other users who operate and manage their networks with different exigencies than does a commercial entity like Motient. In all likelihood, the interference issues that would confront Motient any time it wished to modify its network would preclude all but relatively insignificant modifications.

In effect, absent another major rulemaking proceeding, Motient would be sentenced to the status quo for evermore. In the longer term, Motient's services run the real risk of becoming obsolete, while its competitors in the 800 MHz band, and certainly Nextel, will remain much more agile in designing and implementing its operations. In short, the public interest lies in allowing Motient to move to the upper 800 MHz band along with Nextel and any other commercial users of the 800 MHz band so that the public will continue to have the benefit of Motient's, and other commercial entities' competitive services.

Motient appreciates the complexity of the task before the Commission as it attempts to resolve the existing interference matters involving Nextel Communications ("Nextel"), public safety entities and other commercial licensees in the 800 MHz band.<sup>1</sup> Motient has no interest in further complicating the proceeding or otherwise interfering needlessly with any Commission plan that properly and fairly resolves these concerns. As a commercial entity, however, Motient submits that it is critically important that it be afforded the same treatment as that being offered to other commercial entities, including Nextel. The Communications Act itself mandates no less.<sup>2</sup>

As the Commission is well aware, the overriding issues that the Commission is seeking to resolve are not the result of any actions on the part of Motient, either directly or indirectly. When Motient was licensed by the Commission, it understood the rules, *and the environment*, governing the spectrum for which it would be licensed. It has accepted and abided by those rules. The rebanding effort now contemplated would dramatically change the landscape under which the rules would apply to Motient. Among other things, it would reduce the ability of Motient to aggregate spectrum, deploy frequency agile and/or digital transmitters, buy and sell spectrum, relocate transmit sites, etc.

The expenses associated with the relocation of Motient's spectrum to the upper 800 MHz band should be handled in the very same manner as the relocation of other (non-Nextel) entities would be handled. In other words, if other commercial licensees are permitted to relocate to the upper 800 MHz band, and the expenses of such relocation are imposed on a third party, then the

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<sup>1</sup> Motient recognizes that this submission comes rather late in this proceeding. There has recently been a management shift at Motient, and the new management was only able to take a close look at the proceeding in the past several weeks. While current management recognizes that this submission comes late, it nevertheless feels quite strongly that this is a matter of the utmost concern for Motient's long term viability. Therefore, it implores the Commission to give due weight and consideration to this request, notwithstanding its timing.

<sup>2</sup> See, e.g. *Melody v. FCC*, 345 F. 2nd 730, 732 (D.C. Cir. 1965). There the court properly held that, even when there are minor differences between the situations involving various parties, those parties cannot be treated in a disparate manner unless, the differences are relevant to the purposes of the Communications Act. Here they are not, and disparate treatment cannot be permitted.

expenses associated with Motient's relocation should be similarly imposed.

Clearly, the "exchange rate" applicable for any change in spectrum must be non-discriminatory as between parties. That is to say, to the extent that certain parties are afforded an opportunity to select specific spectrum in the upper 800 MHz band, that opportunity must be presented to all parties, including Motient.

As matters of fairness and equity, adoption of the above proposal is critical to the Commission's rebanding effort. Simply put, were the Commission to move Nextel, and possibly other large commercial carriers to another portion of the 800 MHz band, it would be wholly inequitable and prejudicial not to provide the same relief to Motient. Accordingly, Motient asks only that it be afforded equal treatment.

Motient would be pleased to provide any additional information that would assist the Commission.

Very truly yours,

/s/

Thomas Gutierrez  
Counsel for Motient Communications Inc.

cc. Commissioner Kathleen Q. Abernathy  
Commissioner Jonathan S. Adelstein  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
John B. Muleta  
Edmond J. Thomas  
Michael J. Wilhelm  
Marlene H. Dortch, Secretary